

Zoning Board of Appeals
Minutes
March 7, 2022

A meeting of the Zoning Board of Appeals (ZBA) was held via the Zoom Web Conferencing Service on March 7, 2022 at 7:00 pm.

Present: Mark Jones William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore

Associate Members: Leonard Golder, Michael Naill, Andy Crosby

Absent: Associate Member Ruth Sudduth

The Meeting was called to order at 7:00 pm

Minutes – February 7, 2022

Ernest Dodd moved to approve minutes of the February 7, 2022 meeting as amended. The motion was seconded by Andrew DeMore and carried by a vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore.

Members' updates:

Mark Jones noted that it is likely the Board will receive a Comprehensive Permit (MGL Chapter 40B) application soon. He encouraged Associate Members to attend all sessions of the hearing so they will be eligible to vote in the event a full member might not be available.

Mark Jones noted that in the past the Board issued a Kennel Special Permit which should be reviewed in the next month or so. He encouraged Members to think about the existing bylaw for any recommendations for potential amendments to the Planning Board.

Mark Jones noted the Board should think about non-conforming properties and if there might be the opportunity to change the status of non-conforming lots that are 1 to 1 ½ acres.

Public Hearing – Appeal of Building Commission/Zoning Enforcement Officer Decision. (Volume II, Page 856)

Members participating in the public hearing: Mark Jones William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore

At 7:10 PM Chairman Mark Jones called the Public Hearing to consider the Application filed by Mark Forgues to Appeal the Decision of the Building Commissioner/Zoning Enforcement Officers Decision, to order.

Mark Jones explained that based on the information submitted, it is likely that the hearing will be continued for a future date. For purposes of this evening's session, he would like to allow a 10-minute presentation by the Applicant, 10-minutes for the Owner and then a short period for public comment.

Attorney McLaughlin, representing the property owner Richard Presti, announced that he filed a motion to strike portions of the presentation document filed by Mark Forgues, claiming that the presentation raises issues or makes arguments that were never raised in the original enforcement request and never acted upon by the Building Commissioner or raised in the Appeal to the ZBA. Attorney McLaughlin stated that MGL Chapter 40A, Section 7 says a written request must be made. Section 8 says an appeal can be filed; Section 15 describes the appeal

can be made within 30 days. Attorney McLaughlin further stated the Petitioner should file notice of appeal specifying the grounds for appeal. The October 4, 2021 enforcement request claimed class II licenses carries the burden of increased change in use. The enforcement request also claimed abandonment. The Building Commissioner declined to act noting ongoing litigation. The Board acted on the Appeal by remanding back the Building Commission to make a formal determination.

Attorney McLaughlin stated that the Building Commissioner, on remand, issued a Letter on December 21, 2021 determining that the number of licenses does not translate to expansion of use. The January 6, 2022 request makes no mention of abandonment. Mr. Forgues now introduces now a new theory claiming Erkkinen didn't own all of the premises. The Building Commissioner was not asked to rule on that issue; therefore, it is not legally before the Board. Mr. Forgues recent retort indicates the Building Commission says he can submit more information. Attorney McLaughlin responded that is true, but the information has to be relevant to the appeal. He said the 85-page presentation document also segways on to bus storage, container storage and buffer zones, all which are in Land Court. Attorney McLaughlin said this hearing, based on the appeal, is a matter of licenses and will there be an increase in the future. The future is not before this Board. He said Mr. Forgues seeks to put Mr. Presti out of business.

Mark Forgues explained that on January 6, 2022, he submitted a letter to Mr. Ramsbottom asking for enforcement on the property in regard to ownership. Mr. Ramsbottom said he has to submit everything to the Board. Mr. Forgues said he has information proving the property is not grandfathered. Mr. Presti has not reached out to appease the abutters. When Presti bought the back in 2004 it was a wooded area. He then applied for a new dealership for 50-60 cars. That is the increase in use.

Mark Forgues said Mr. Erkkinen did not own the abutting parcel at 102 Great Road or 85 Great Road. There was no grandfathering. In his argument Mr. Presti talks about a letter from Erkkinen who said he had up to 200 cars and was leasing the property behind. Mark Forgues said it would have been physically impossible to have parked cars on that one lot. Erkkinen bought the abutting property in 1970 to expand his business. There was a signed decision that there were 65 cars in 1976.

Mark Forgues said in 2004 an article to rezone the back property from residential to business was presented to Town Meeting. At that time an aerial photograph showed the property was overgrown. Presti has since stripped the property.

Mark Forgues said Erkkinen and Presti were in a partnership. Erkkinen owns the mortgage on the property and therefore, Mark Forgues does not believe the affidavit submitted to the Board. He believes Mr. Erkkinen bought the property for 50-75 cars he might have had. There are currently about 75 cars on the property. Steppingstones was there for 19 years on the smaller property. The abutting property was bought to expand but the expansion was never lawfully enacted. He should have applied for a Special Permit and there should have been a Site Plan Approval. He now wants to put cars in the back at 84 Great Road.

Mark Forgues said the Building Inspector said he needs a site plan for the car port. He applied for a Special Permit for the carport but did not include a site plan. Mark Forgues said he agrees he can have as many licenses as he wants but he put the cars on 84 Great Road lot that was not owned until 1990.

Mark Jones asked Mark Forgues if he is saying that the two other parcels were never used for cars prior to 1968. Mark responded yes, the property was owned or used by Erkkinen prior to 1968.

David Hartnagel said he understands Mark Forgues doesn't believe the affidavit by Erkkinen and asked, if the Board said it has no reason to not believe an affidavit, what would his response be. Mark Forgues said Erkkinen did not own the property in 1968. It was noted that the affidavit said he was leasing the property. Mark Forgues said there is no evidence of a lease from 1968. If there was a financial benefit, which he thinks is true, he believes that in 1970 Erkkinen bought the property to expand the business.

Mark Forgues said when Presti bought the back property in 2004, the zoning article portrayed a map showing a 50-buffer, which he hasn't provided.

Mark Jones said it is important for Board members to review the documents and decide what is relevant. Mark Forgues said if you look at the Building Inspectors review of the Special Permit in 2001 it was determined that some uses were grandfathered. Mr. Presti brought in uses that were not there before his ownership. Mark Jones said those issues are in dispute in court right now under the 2017 decision. Mark Forgues said the court ruled that, as an abutter, he can file the same complaint. He said the 2001 decision was made on the original property noting you can't grandfather what was brought in after.

Mark Jones proposed to continue the hearing to a date certain where there will be an opportunity for further discussion. Ernest Dodd said the Board needs to read the 2017 ZBA Decision to see what was defined for each parcel. Attorney McLaughlin said he has no problem with a continuance.

Mark Forgues said it is unfortunate that he has to do this. If Mr. Presti were a good guy and did the right thing instead of starting a big mess. This is a cash cow for him, and he complains he has no money.

Leonard Golder asked if there is any chance of the abutters and Mr. Presti getting together to come up with a resolution. Mark Forgues said Mr. Presti has never reached out. The only way to get a response is to complain. If Mr. Presti wants to put a proposal together, he would be willing to talk.

Rich Presti said Mr. Forgues and Ms. Fisher just disapproves of him and want all his business to go away. He asked the Board stick to the matter at hand.

Attorney McLaughlin the case with Ms. Fisher was remanded back to land Court. He said that he and her attorney, Mr. Bobrowski are open for discussions. He noted that the heavy trucks and containers are gone from the property. They are fighting about buses and landscapers.

David Hartnagel asked about the status and schedule of the appeal in Land Court. Mark Forgues said the schedule is year away to go back to land court. David Hartnagel asked if it is possible for some kind of agreement, if not discovery, by the end of the year.

Katie Fisher noted her case is completely separate from Mark Forgues. There has never been a Special Permit for anything. She doesn't care about the grandfathered issues she is concerned that none of the current uses were lawfully permitted.

Mark Jones proposed to continue the public hearing to April 4, 2022. Mark Forgues said that Mr. Presti should reach out to him. Mr. McLaughlin said any settlement discussions would be done with him and Mr. Bobrowski.

Jen Surwilo, 10 White Pond Road, said she is not in favor of the suggestion for both parties to get together and work things out. If a Special Permit is required, it is required. There have been a number of ZBA meetings for special permits that she has attended. This property needs to be done by the letter of the law. It is difficult to make decisions on activities that existed prior to zoning.

Ernest Dodd moved to continue the public hearing to April 4, 2022 at 7:30 pm. Mark Forgues and Attorney McLaughlin stated the continuance to April 4, 2022 is acceptable to them. Dorothy Granat, 11 White Pond Road, said she has seen more and more happen on the property. She called Mr. Presti the other night to give him the benefit of the doubt. The motion was seconded by David Hartnagel and carried by a vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Karen Kelleher will distribute a copy of the 2017 Special Permit decision to Board Members.

Public Hearing Continuance – 92/102 Great Road – Special Permit (Carport) (Volume II, Page 855)

Members participating in the public hearing: Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore

At 7:48 pm the Public Hearing to consider the application for Special Permit to allow a carport at 92/102 Great Road, filed by Richard Presti, was called to order.

Ernest Dodd moved to waive the reading of the Notice of Public Hearing. The motion was seconded by David Hartnagel and carried by a vote of five in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Richard Presti explained the application is for a 20-foot by 40-foot carport, basically a shed with no sides. The carport is intended to provide cover for delivery of sold vehicles. They were told that they cannot wash cars on the site, therefore that use has discontinued. As it is a carport it should not require the need for drainage calculations. They will deliver cars one way or the other, the question is if they could be afforded the ability to get a 20-foot by 40-foot open sided cover to deliver vehicles. He also asked that he Board stick to the topic at hand and not other issues.

David Hartnagel asked where on the parcel is the carport located. Mark Jones said it is about 50 feet west of the building.

Len Golder asked how many cars would be in the carport. Rich Presti said it only fits one car at a time. Len Golder asked if it is intended for cars that have been sold. Rich Presti responded yes, so they can deliver the vehicle to the buyer and not stand in the elements.

William Byron asked how Mr. Erkinen delivered cars without a carport. He noted that you don't really "need" a carport. He said cars have been delivered for years and asked why a carport is so necessary now. Rich Presti said this is a simple request to allow a carport for deliver the vehicle out of the elements. William Byron asked about the green lattice that was added and asked if it was added to block something. Rich Presti said the lattice is something new and

assumes it doesn't require a permit. Rich Presti said the site is for cars in general and in general, with the new business owner, there is a great improvement to the site.

It was noted that the carport is approximately 10 feet tall.

Katie Fisher, 1 White Pond Road, said she will only touch upon issues since the appeal in Land Court. Since that appeal the site has been stripped. There is no indication as to who parks where. She questioned if there is handicap access, a fire lane, and where are they storing snow. There is no site plan. Nothing should be added until there is a site plan. Now they have expanded trash into the back next to her house next to a monitoring well.

Dorothy Granat, White Pond Road, said she is concerned about water quality. She called DEP in. They used to wash cars inside the building and DEP found a troth that was used after the previous tenant was told not to. She is concerned that licenses have been renewed. The Town should know where cars are getting washed. The problem is there is a large aquifer that covers Lower Village.

Jennifer Surwilo noted that the fact that the carport is already installed, and they are requesting a permit after the fact goes to the manner how the business is operated.

Mark Forgues, 9 White Pond Road and 39 Adams Drive noted that carport is already erected. That's what he does all the time. He is takes action and then asks for forgiveness. There is florescent lighting shining off of it. He should be made to remove it until he has a Special Permit.

David Hartnagel asked Mr. Presti for confirmation if the carport is currently on the property. Mr. Presti said it is currently on the property and was installed about two months ago. They were not aware it required a Special Permit.

David Hartnagel asked how he learned he needed a Special Permit. Rich Presti said Mr. Forgues complained to the Building Inspector. The Building Inspector told the builder who did the job to file for the Special Permit.

Mark Forgues said the bottom line is, a site plan would rectify some of the problem. It would be known where the cars will go and how the property will be used.

Mr. Presti asked that the discussion stick to the subject at hand which is the question if a carport requires a site plan review.

Katie Fisher asked who will use the car port and if it is specific to a certain business, and what was it previously used for. Rich Presti said the spot is for Car lot Express. It is located over a parking space and the use is basically to park a car to deliver to the customer.

In response to a question if location of the carport meets the zoning setback requirements. Mr. Presti said it is located approximately 100 feet off the street.

Dorothy Granat noted the right-of-way noted on the plan submitted with the application and questioned the purpose of the right of way. She noted it does not show the loss of property that he was given monitory compensation for.

Rich Presti said it is his understanding the right of way existed when the Kurker's owned the property and leased it to Erkkinen. He understands it was extinguished when Erkkinen bought the property. He said the location of the carport is nowhere near the well or the street.

Dorothy Granat said the licenses that were issued gave the okay for a certain number of cars inside and asked if they still have access to the bay in the leased area. Rich Presti said he believes the addition for space for indoor cars was directed to the showroom and there is a main repair shop which is not a place appropriate to deliver a car.

Katie Fisher said it is important to talk to Town Counsel on this issue.

David Hartnagel moved to close the hearing. The motion was seconded by Ernest Dodd and carried by a vote of five in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Mark Jones said the Board will deliberate on the application another night.

Public Hearing 16 Pine Point Road Special Permit (Volume II, Page 857).

Ernest Dodd moved to waive the reading of the Notice of Public Hearing. The motion was seconded by David Hartnagel and carried by a vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Charles Bell, Applicant, explained that they are looking to put dormers on the second floor. They will not be extending the roof line. They are trying to expand the slanted ceiling. The dormers will be on both sides of the roof.

Ernest Dodd said they are staying on the existing foundation and will not exceed the existing height of the roof.

There were no abutter comments.

Ernest Dodd moved to close the Public Hearing. The motion was seconded by Andrew DeMore and carried by a vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Deliberations – 16 Pine Point Road

Members reviewed a draft Decision.

Andrew Demore moved to Grant the Special Permit and approve the Draft Decision as written. The motion was seconded by Ernest Dodd.

William Byron noted concern about the sketch plan submitted as it is not clear that they are staying with the existing walls. Members noted that it appears they are staying within the existing walls. The motion carried by a vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Public Hearing – 206 Barton Road – Special Permit Modification (Volume II, Page 848-1)

The Public Hearing Continuance to consider modification to the Special Permit for 206 Barton Road was called to order.

Tim Hess, of InSitu Architects, Inc, representing the Applicant, explained they are proposing a number of small increments to the footprint of the foundation from the Original Special Permit. In simple terms, they wanted to stay within the exact footprint of the existing home. They have found the current conditions of the foundation dimensions create unnecessary and inefficient complications for the construction process. They would like to adjust the plan so that the forms will be divisible by two-foot increments primarily to achieve economy and reduce the quantity of cuts on the job. Tim Hess presented a plan indicating the changes. It was noted that the plan referenced in his presentation has not been provided to the Board.

Mark Jones said it appears that substantially there will be no new encroachments closer than the existing greatest encroachment.

Ernest Dodd said he is having trouble with the fact there is no official survey plan. He feels there should be a survey plan that is date stamped. Mark Jones said it is his sentiment that the Board needs to have a date stamp to refer to in the Decision. Ernest Dodd said at a minimum the Board needs the two drawings, referenced this evening, in hand and date stamped.

Mark Jones asked members if, presuming the Board has the plans in hand, if there are any concerns with the proposed change.

Len Golder said the increments appear to be small.

It was noted that the Building Commissioner has the authority to approve minimal changes to the Plan. Building Commissioner Frank Ramsbottom said that he felt it should be reviewed by the Board given the small size of the lots and the fact that they were expanding into the side yard.

Mark Jones said in theory, the further encroachment is less than the maximum existing encroachment. If the proposed change was beyond the maximum encroachment the Board might have a problem. Mark Jones said that the Board cannot close the hearing until the plans are received.

Ernest Dodd clarified that he would like an engineer stamped site plan with dimensional setbacks shown. Tim Hess said they will update the site plan with a stamp date and signature. Mark helpful to indicate setbacks to be built to, the maximum encroachment and all the setback dimensions, so the Board will know where the building stands in each location and at each wall.

Frank Ramsbottom said he will need a Plot Plan with a Survey Stamp rather than an engineer's stamp. Ernest Dodd said for purposes of the ZBA filing, he is okay with an architect stamp.

Karen Kelleher reported that the Conservation Director advised that the Conservation Commission may want to revisit the plan.

Ernest Dodd moved to continue the Public Hearing to Monday March 14, 2021 at 7:00 pm. The Motion was seconded by Andrew DeMore and carried by a vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore).

Public Hearing Continued - 51 Hale Road

The Public Hearing continued from February 7, 2022 to consider an Application for Special Permit to allow construction of a garage at 51 Hale Road, was called to order.

Applicant Chris Schuch presented two sketch plans in order to get feedback from the Board. One plan shows a 30-foot by 24-foot garage and the other shows a 40-foot by 24-foot garage.

It was noted that there is an easement for the existing telephone pole.

Ernest Dodd noted that the Plan indicates the required front yard setback as 35 feet and it should be 30 feet.

Members asked Chris Schuch which size garage he prefers. Chris Schuch said he is inclined to build the 40-foot garage but with the price increases, he is not sure he can afford it.

It was noted that the garage will be located on a portion of the existing concrete pad.

It was noted there is no required setback to the existing utility pole. The proposed garage will be located approximately 6 inches from the pole. Len Golder asked if there would be a problem for access to the pole for maintenance. Chris Schuch said he was told by Verizon that they need a couple of feet clearance.

Abutter Fred Duseault thanked Chris Schuch and said he likes the revised plan. He would personally prefer the smaller size due to appearance but knows he needs the 40-foot size to accommodate everything stored in temporary structures. He hopes that Chris will take into consideration as to how it looks noting that the house needs painting.

Mark Jones asked if it has been the applicant's aim to stay out of the 100' buffer. Chris Schuch responded yes.

David Hartnagel asked if there will be any exterior lights. Chris Schuch said he has no plans for exterior lighting.

William Byron asked what the color of the garage will be. Chris Schuch said he is going back and forth between barn red or brown.

It was noted the garage will be 15 feet high measured to the peak.

Ernest Dodd noted the larger garage would provide a better chance to store more.

It was noted that the property is relatively flat.

Ernest Dodd said he could place the garage in the 100-foot buffer area with the approval of the Conservation Commission. Chris Schuch said he prefers not to locate the garage in that area because it would need an additional \$10K to \$20K for site work (tree removal, etc.).

Ernest Dodd said the proposal requires a Special Permit for a non-conforming lot. The Applicant has addressed concerns of the abutters.

David Hartnagel said he supports the proposed garage as long as he puts everything currently stored outside is moved inside the garage and that exterior lighting is prohibited.

Andy Crosby asked if there is a problem with him working on vehicles on a gravel surface. Members noted it would be no different than any homeowner working on their vehicle.

It was noted that the well is located under the house and the septic system is by the road.

Chris Schuch agreed to withdraw his request for a variance.

Members noted that the proposed garage is appropriate provided that the existing temporary structures are removed.

Members agreed that the sketch plans as submitted adequately indicate that no variance is required, and the Building Commissioner will require a more detailed site plan for the Building Permit.

David Hartnagel moved to close the Public Hearing. The motion was seconded by Ernest Dodd and carried by a vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore.

Deliberations – 51 Hale Road

Members discussed proposed findings and conditions to include:

- Removal off all temporary structures
- No lighting unless otherwise required by the Building Commissioner.
- The garage shall be located within the required front side and rear yard setbacks.
- Finding that the Board makes no assumption as to location of the pole in relation to the garage

Abutter Fred Duseault asked about storage of artwork materials. David Hartnagel said it would be difficult to structure a condition that ambiguous and noted the artwork materials are not part of the application.

David Hartnagel suggested a finding that the Board makes no assumption with regards to the telephone pole and any setback requirements.

Members agreed to review a draft decision at its meeting of March 14, 2022.

Upcoming Meetings:

Monday, March 14, 2022 at 7:00 PM via zoom

- Public Hearing Continuance – 206 Barton Road
- Deliberations and Vote – 51 Hale Road

Monday, March 21, 2022 at 6:30 PM – in person and via zoom

- Deliberate and Vote 92/102 Great Road – Special Permit (Carport)

Respectfully submitted,

Karen Kelleher, Administrative Assistant